

FAIR HOUSING

Update

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King County Office of Civil Rights

New Sample Policy: Reasonable Accommodations for People with Disabilities

By Roxanne Vierra

Fair housing agencies receive frequent requests for technical assistance on the subject of applicants and tenants with disabilities. Housing owners and managers often feel confused when faced with requests for disability-related accommodations or modifications. This new sample policy was developed by the fair housing agencies of Washington state to assist housing providers in understanding the needs of tenants who have disabilities and in establishing procedures for staff to follow when they receive accommodation requests.

About one in every five people in the U.S. has a disability – a significant portion of the potential rental market. While many don't require accommodations, some do have needs that will impact their use and enjoyment of a living space. Federal, state and local disability access laws require that, upon request by the tenant, housing owners and managers must provide reasonable accommodations and should permit disabled tenants to make reasonable modifications. This sample policy takes the guesswork out of the process.

The policy includes helpful background about the various disability access laws that affect housing. The policy also defines:

- **accommodations**—changes to housing policies and procedures needed to meet the needs of disabled tenants, such as providing the rental paperwork in large print, allowing a tenant to keep a service animal, or assigning a reserved accessible parking space
- **modifications**—physical change made to a tenant's living space which is necessary to afford the disabled tenant full enjoyment of their dwelling, usually made at the tenant's expense, such as lowering closet clothes rods or adding grab bars in the bathroom
- **reasonable**—the requested accommodation is related to a tenant's disability needs and doesn't impose an undue financial and administrative burden on the housing provider.

In addition, the sample policy provides details about service animals and accessible parking, the two most common

accommodation issues that perplex housing providers. Specific guidelines are provided for housing staff and also for tenants, along with sample letters for making accommodation/modification requests and responding to them effectively.

Housing providers can duplicate the sample policies or use them as guidelines for drafting their own policies and procedures. A copy of the new accommodations policy is available online at the King County Office of Civil Rights Web site at <http://www.metrokc.gov/dias/ocre/sample3.htm> (text version) and <http://www.metrokc.gov/dias/ocre/sample3.pdf> (PDF version). Other sample housing policies developed by the fair housing agencies group include:

- Service Animals
- Tenant-on-Tenant Harassment

Both are available online at <http://www.metrokc.gov/dias/ocre/FHpolicies.htm>. You can also contact any local civil rights agency to obtain copies of the sample policies by mail.

Marital Status Protection in Washington State

Where Did it Come From and What Does it Mean?¹

By Berneta Walraven

Discrimination in housing based on marital status is illegal in Washington. The Washington State Law Against Discrimination (LAD), found in the Revised Code of Washington (RCW) 49.60.222, makes it illegal to refuse to engage in a real estate transaction or provide different terms, conditions or privileges to a tenant, or prospective tenant, because of the tenant's marital status.

Marital status was not always a protected class under Washington law. In 1973 the LAD was amended to prohibit discrimination in real estate transactions on the basis of marital status and sex. These two new protected class categories joined the existing categories of race, creed, color and national origin that had been part of the original 1969 law. Since 1973, the State's fair housing law has been further amended to prohibit discrimination against people with disabilities and families with children.

After being added to the law, it was less than a year before marital status protection was being examined. Both the Washington State Human Rights Commission (HRC), the agency that enforces the LAD, and the legislature further defined the law. In April 1974, the HRC issued *Declaratory Ruling No. 9*, which advised Evergreen State College that it was an unfair practice for Evergreen to permit occupancy of its student housing units by **married couples**, but not by **unmarried couples** of the opposite sex.² The legislature quickly responded to this ruling, and in 1975 exempted dormitories from the sex and marital status coverage of the law.³

A marital status case quickly came before the court in 1976 in the case of **Loveland v. Leslie**. In this case, Steve Leslie contacted the owners of an apartment in North Bend, WA and told Ruby Loveland that he was interested in the 2-bedroom apartment for himself and a male roommate. Ms. Loveland's response was that the apartment would only be rented to married couples. The King County Superior Court agreed with the HRC's determination that marital status discrimination had occurred, and the property owners appealed the finding to

the Washington State Court of Appeals. In 1978 Appeals Court agreed that the owners' refusal to rent to two men amounted to marital status discrimination.⁴ The owners argued that the term "marital status" was unconstitutionally vague, but the Court disagreed, finding that the term is commonly understood to relate to the existence or absence of a marriage bond.

Marital status is currently defined as the legal **status** of being married, single, separated, divorced or widowed.⁵ However, there is a distinction between marital status and cohabitation. "Status" relates to an individual, not a couple. The issue of how the co-habitation of unmarried couples relates to marital status protection is complex and has been the subject of much discourse. In **McFadden v. Elma Country Club**, the Washington State Court of Appeals determined that marital status does not include, or protect, co-habitation⁶. Unmarried, cohabitating **couples** are not protected under this law. Occasionally, HRC will receive a call from an unmarried couple being denied an available rental unit because of their co-habitation. A housing provider has stated to them that her/his religious or "moral beliefs" do not allow her/him to rent to unmarried couples who are cohabitating.⁷ This housing provider is using an argument under the 1st Amendment of the U.S. Constitution, claiming her/his right to "free exercise of religion." The HRC will not accept this type of complaint for processing (because of the **McFadden** decision), even though the couple may argue that they are being discriminated against based on their marital status. However, using a different set of facts, if a property manager tells an unmarried couple that their application will not be processed because she prefers to rent to married couples, because married couples are more stable than unmarried couples, that complaint will be accepted for processing. The distinction between what may be marital status discrimination and issues of co-habitation may be murky!

Although marital status has been frequently discussed in the courts, there have not been

a significant number of complaints filed with the HRC alleging discrimination on this basis. Since January 2000, there have been **four** complaints filed and closed, and one complaint is currently pending before the agency. Marital status discrimination was not found in any of these complaints. As an example, an unmarried woman with three foster children claimed that she was denied the opportunity to rent a single-family home in Auburn, WA, which she wanted to share with another foster mother and her three children. The HRC found that the Complainant had not properly applied for the house, and that her monthly income was uncertain. Furthermore, two months prior to Complainant's application the landlord had rented another property to a single female with two children. Therefore, marital status was not a factor in this case.

In summary, it appears from the small number of complaints being filed, and the fact that in these complaints marital status discrimination is not proven, that housing providers are aware of their responsibilities and are not denying applicants based on their marital status. The law in this area is still developing. If you have questions, please contact the HRC at (206) 464-6500.

¹ I would like to thank my colleagues, Marilyn Akita, Idolina Reta, Les Smith and Cheryl Strobert for their research assistance, making this article possible.

² Washington State Human Rights Commission, *Declaratory Ruling No. 9*, April 18, 1974.

³ RCW 49.60.222(3), "Notwithstanding any other provision of this chapter, it shall not be an unfair practice or a denial of civil rights for any public or private educational institution to separate the sexes or give preference to or limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or families with children status."

⁴ *Hugo Loveland, et al. v. Steve Leslie, et al.*, 21 Wn. App. 84; 583 P.2d 664 (1978)

⁵ RCW 49.60.040(7)

⁶ 26 Wn. App. 195; 613 P.2d 146 (1980). "We hold, therefore, that in the absence of any authoritative decision to the contrary, in view of the legislative history of the statute, in the absence of any strong public policy to the contrary, marital status discrimination as used in RCW 49.60.222 does not include discrimination against couples who choose to live together without being married."

⁷ This issue was discussed at length in a 1996 decision of the California Supreme Court, *Smith v. Fair Employment and Housing Commission*, 12 Cal.4th 1143; 913 P.2d 909; 51 Cal. Rptr.2d 700.

Can I deny housing to prospective tenants based on their participation in the Section 8 program?

by Karen Peirola

"We don't accept Section 8 at this complex."

"The Section 8 paperwork is too burdensome, and our leases are only 6 months long. Sorry -- you'll have to apply somewhere else."

Housing providers -- Beware: If your property is located in unincorporated King County, Seattle or Bellevue, make sure your complex doesn't have a policy of turning away applicants based on their participation in the Section 8 program. In these jurisdictions, you cannot refuse to rent to prospective tenants simply because they have a Section 8 voucher. The Section 8 program, also known as the Housing Choice Voucher Program, is a federal government program that assists very low-income families, the elderly and tenants with disabilities to afford housing in the private housing market. The program is administered by local housing authorities.

When an applicant on Section 8 applies for an apartment, you should use your regular, non-discriminatory screening criteria. (Note: their income should be calculated using their smaller portion of the rent only) If they otherwise qualify for the apartment, you cannot deny them simply because they have a Housing Choice Voucher.

How does Section 8 work? When a tenant on Section 8 locates an available apartment, the housing authority inspects the apartment to ensure that it meets an acceptable level of health and safety. When the unit passes inspection, a contract and one-year lease are immediately signed and rent payments begin. The housing authority pays a majority of the rent directly to the housing provider each month and the tenant pays their portion of the rent to equal the total rent charged for that apartment.

The tenant is expected to comply with the lease and program requirements, to pay

his or her share of the rent on time, and to maintain the apartment in good condition. The housing provider is expected to provide services agreed to as part of the lease and to maintain the apartment in a decent, safe and sanitary manner throughout the duration of the tenancy.

If you would like more information on the Section 8 program, in King County contact King County Housing Authority, Section 8 Office, 206-214-1300; in Seattle contact the Seattle Housing Authority, 206-239-1500; in Renton contact the Renton Housing Authority, 425-226-1850 or 425-255-8373 TTY.

If you have any questions about this article or about other fair housing laws, contact the King County Office of Civil Rights at 206-296-7592 or 206-296-7596 TTY, or visit our web site at www.metrokc.gov/dias/ocre/HO.htm.

King County Office of Civil Rights

Can I deny housing to prospective tenants based on their age?

by Karen Peirola

"I don't like to rent to college students or families with teens, they cause too many problems."

"I see you have no rental history. I'm not sure I want to accept a tenant who's so young."

Housing providers -- Beware: If your property is located in unincorporated King County or Seattle, and an applicant for an available unit is otherwise eligible to rent based on non-discriminatory rental criteria, you cannot deny them simply because of their age. (Note, however, that to sign a lease agreement, the applicant should be at

least 18, or legally emancipated if younger than 18).

What does "age" mean as a protected class in housing? Most people are familiar with protections against age discrimination in employment which includes people who are 40 or older. Protections against discrimination based on age in housing covers any age. For example, you could not deny an available unit to a prospective tenant because you thought they were too young or you didn't want "college-aged" students in your complex, or you thought "teens" were disruptive so you limit your housing to families with younger

children. These are all decisions to deny housing based on the age of its occupants. Remember, if the applicants are otherwise eligible to rent based on your regular, non-discriminatory rental criteria, you cannot deny them in unincorporated King County, Seattle or Tacoma simply because of their age. Remember also that discrimination against families with children under the age of 18 is prohibited in all jurisdictions.

If you have any questions about this article or about other fair housing laws, contact the King County Office of Civil Rights at 206-296-7592 or 206-296-7596 TTY, or visit our web site at www.metrokc.gov/dias/ocre/HO.htm.

A look at Seattle's "other" protected classes

Protection based on political ideology, sexual orientation and gender identity found in few jurisdictions

By Elliott Bronstein and Jacque Larrainzar

One of Seattle's less familiar laws made the news earlier this year. Last March both the *Seattle P-I* and *Seattle Times* ran front-page stories alleging that protesters had been forced to leave Westlake Mall because of the anti-war signs they carried. The news articles highlighted Seattle's listing of "political ideology" as a protected class – not just in public accommodations, but also in housing, employment and contracting.

The City of Seattle and King County both list several protected classes beyond those covered under state and federal law. Political ideology and sexual orientation were added to the City's housing ordinance in 1975, more than a quarter-century ago. Gender identity joined the list in 1999.

Disparate treatment is at the heart of most cases of illegal discrimination, no matter which protected class is invoked. Property managers and other business owners have the right to establish their own reasonable policies, as long as they do not have the effect of discriminating against people based on protected classes. It's consistency that counts – a landlord who allows a Union Jack to flap from one Seattle tenant's balcony must also allow a neighbor's French tricolor.

The last time that the Seattle Office for Civil Rights (SOCR) saw a housing case involving political ideology was in 2001, when a local landlord ordered a tenant to remove a "rainbow" flag from his balcony. The Charging Party eventually withdrew his charge, after it became clear that the landlord simply was enforcing the apartment complex's blanket ban on hanging anything from a balcony.

Sexual orientation and gender identity

Gay, lesbian, bisexual, and transgendered people face pervasive discrimination in the workplace, as well as in housing and public accommodations. For this reason, many states have extended anti-discrimination protection in employment to cover sexual orientation. Some states also have extended protection to housing and public accommodations.

For many gays, lesbians, bisexuals and transgendered people, sexual orientation and gender expression can be interwoven. For some people, being lesbian or gay not only is about having a sexual preference for the same sex, but also incorporates a certain dress, manner or style – a different way of expressing gender than someone who is heterosexual.

From a legal standpoint, however, sexual orientation and gender identity are unrelated. It is possible that an employee protected against discrimination based on sexual orientation still could be discriminated against for gender nonconformity. We should not assume that gender identity (including transgenderism) is protected merely because a jurisdiction prohibits sexual orientation bias.

Across the United States, more jurisdictions are adding sexual orientation to their lists of protected classes, but only three states – Minnesota, New Mexico, and Rhode Island – have statutes that explicitly prohibit discrimination based on gender identity. Courts and administrative agencies in the District of Columbia and five additional states – Connecticut, Hawaii, Massachusetts, New Jersey and New York – have interpreted either their sex or disability protected classes to prohibit certain forms of discrimination against transgendered people.

For the first time this year, Washington State's House of Representatives passed a measure to protect sexual orientation in housing and employment, though the State Senate refused to take up the measure.

Transgendered employees can present unique workplace challenges. Transitioning employees – those who are moving outside the socially accepted standards of dress, physiology and/or behavior of their birth gender – often cannot avoid challenging community standards about gender-appropriate appearance or expression. Little legal protection exists for gender non-conformity in the workplace, because few jurisdictions specifically protect gender

identity, though some have filed charges involving gender identity on the grounds of gender or disability.

In SOCR's experience, gender identity rarely has played a role in housing discrimination cases. (It is more likely to appear as a protected class in employment cases.) Sexual orientation, on the other hand, forms the basis of 2-3 housing discrimination charges per year.

Two years ago, SOCR investigated housing discrimination charges filed by a pair of lesbians against a local faith-based housing corporation. The settlement called for the corporation to remove language from the lease agreement that had the effect of discriminating against them based on their sexual orientation.

The case illustrates a broader point in fair housing law: religious organizations that operate commercial housing programs must obey fair housing laws, even if their sponsoring churches espouse a different belief. Religious organizations do enjoy a broad exemption from most anti-discrimination regulations when the program is an integral part of the church itself. A church, for example, may choose its own participants for a monastery or other cloistered housing program, but it must follow local and national fair housing laws for any housing program open to the general public.

By embracing laws that treat people equally regardless of gender identity, sexual orientation or political ideology, Seattle has become one of the finest places to live in the U.S. Welcome to the future!

Want to print out a list of protected classes in different local jurisdictions? Point your web browser to: www.cityofseattle.net/civilrights/documents/jurisdiction%20sheet-hsing.pdf.

For more information about the Seattle Office for Civil Rights call (206) 684-4500 (TTY 206-684-4503), or find SOCR on the Web at www.seattle.gov/civilrights.

Protected Classes Covering Washington

By Lauren Walker

Fair housing relies upon protected classes covered under federal, state and local laws. Sometimes these protected classes can become confusing when a property or realty company owns rentals or homes for purchase across a large geographic area. Even individual landlords may own properties in areas that may be covered by not only the federal and state law, but also a county or city ordinance. It is the housing provider's responsibility to be aware of these protected classes that cover different regions along with the varying mechanisms for filing complaints.

Many counties and municipalities have laws or ordinances which are "substantially equivalent", or equal, to the federal law, but also include additional protections. These entities fall under two categories: 1. government agencies that have substantial equivalent laws plus other protections which includes an enforcement mechanism (a way to decide upon whether discrimination exists-or a way to investigate allegations of housing discrimination) in place and 2. cities or counties with independent ordinances and their provisions.

Government Agencies

The **U.S. Department of Housing and Urban Development (HUD)** operates under the federal Fair Housing Act which covers race or color, sex, religion, national origin, familial status (presence of children under the age of 18) and disability.

In addition to HUD, there are four government agencies (Fair Housing Assistance Programs or FHAPs) in the State of Washington. FHAP organizations have built in complaint investigation mechanisms for an impartial review of housing discrimination allegations. These FHAP organizations include:

The **Washington State Human Rights Commission (WSHRC)** which operates under the Washington State Law

Against Discrimination which includes protected class provisions under the Federal Fair Housing Act (FHA) plus marital status and specific guidance on assistive animals.

The **Seattle Office for Civil Rights (SOCR)** has the broadest protections in the State of Washington and operates under the Unfair Housing Practices law which includes protected class provisions under the FHA and marital status under the WSHRC law plus ancestry, creed, housing subsidy, age, sexual orientation, gender identity and political ideology.

The King County Office of Civil Rights (KCOCR) operates under the Open Housing law and includes the FHA and WSHRC protected classes but adds ancestry, housing subsidy, age and sexual orientation. King County's law covers unincorporated portions of the county.

City of Tacoma, Department of Human Rights and Human Services (THRHS) operates under the Law Against Discrimination which includes the federal and WSHRC provisions and adds age, sexual orientation and gender identity.

Independent Fair Housing Ordinances

Many counties and cities have adopted fair housing ordinances that match all or portions of the federal FHA or Washington State law and sometimes add more protections based upon the desires of

their constituents. Due to the fact that the federal and state laws have mechanisms for jurisdictional investigation of their own protected classes these cities and counties do not need to have formal complaint investigation methods in place unless there are protections not covered under the federal or state laws. In the later cases, these entities need to consider how allegations of housing discrimination will be investigated and whether there will be any penalties.

In addition to HUD and the FHAP agencies there are numerous cities and counties in Washington that have existing fair housing ordinances. Many of these ordinances have additional protections to include age, sexual orientation, ancestry and creed. Complaint and filing systems range from referral to centers for dispute resolution for mediation, arbitration, human rights commission, city councils, designated staff in various departments to no system specified at all.

Smaller jurisdictions do not need to have a substantially equivalent law because the federal and state laws exist to protect their constituents. If the smaller jurisdiction adds protected classes that go beyond the scope of the federal and state laws a mechanism needs to be put into place to allow for a thorough investigation.

Help for Jurisdictions that need Support

In addition to HUD and the FHAP agencies there are Fair Housing Initiative Program (FHIP) organizations. FHIP organizations are not tied to a specific jurisdiction, but are knowledgeable on all protected classes throughout the state and can either direct the individual to the correct authority or advocate for them through the sometimes difficult process. There are two FHIP organizations in the state that include the Northwest Fair Housing Alliance in Spokane that serves eastern and central Washington and the Fair Housing Center of South Puget Sound in Tacoma that serves western and central Washington.



Upcoming Events

August 16, 2003

New Americans Fair Housing and Homebuyers Fair

Free Food, Prizes, Kid's Activities
and Day-Care Available
Tukwila Community Center
12424 42nd Ave. S, Tukwila, WA 98168
10 a.m. - 3 p.m.
Info. (206) 587-5641

July 23, 2003

Fair Housing Training

Provided by HUD, WSHRC, SOCR, and
KCOCR
Jackson Federal Building
South Auditorium, 4th Floor
915 Second Avenue, Seattle, WA
9 a.m. - Noon
For additional information contact Bailey
delongh at 206-296-7592

How to reach us

Fair Housing Center of South Puget Sound

253-274-9523 / 1-888-766-8800
TTY 253-274-9523

King County Office of Civil Rights

206-296-7592
TTY 206-296-7596

Website: www.metrokc.gov/dias/ocre

Northwest Fair Housing Alliance

509-325-2665 / 1-800-200-FAIR

Seattle Office for Civil Rights

206-684-4500
TTY 206-684-4503

Website: www.cityofseattle.net/civilrights

Tacoma Human Rights and Human Services Dept.

253-591-5151
TTY 253-591-5153

Website: www.cityoftacoma.org/HRHS

U.S. Dept. of Housing & Urban Development

206-220-5170
TTY 206-220-5185

Website: www.hud.gov/offices/fheo

Washington State Human Rights Commission

360-753-6770 / 1-800-233-3247
TTY 1-800-300-7525

Website: www.wa.gov/hrc

About this publication

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Tacoma's Crime Free Housing Program

July 23 & 24, 2003 — 8 a.m. – 5 p.m.

City of Tacoma, Central Wastewater Treatment Facility, Transmission Conference Room,
2201 Portland Avenue, Tacoma, WA 98421

Class size is limited. Registration closes 5:00 PM, July 18, 2003

Lunch: Brown bag

FAX your registration to 253-591-5121 attn.: Mary Beth Riggs, TCFH Program

Or mail completed registration form to:

Tacoma Human Rights & Human Services
747 Market Street Room 836, Tacoma, WA 98402

For additional information, contact Mary Beth Riggs, Tacoma Crime Free Housing
Coordinator, at 591-5160.

The training is FREE, however, 15 continuing education clock hours are available through
Clover Park Technical College at a cost of \$3.36 per clock hour

Please contact CPTC at (253) 589-5666 for registration. Payment for clock hours is requested
at registration.